Federal Court of Appeal  Cour d'appel fédérale

Date: 20121123

Docket: A-56-12

Citation: 2012 FCA 310

CORAM: **NOËL J.A.**
MAINVILLE J.A.
WEBB J.A.

BETWEEN:

LORETTA BECK

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Halifax, Nova Scotia, on November 20, 2012.

Judgment delivered at Ottawa, Ontario, on November 23, 2012.

REASONS FOR JUDGMENT BY: WEBB J.A.

CONCURRED IN BY: NOËL J.A.
MAINVILLE J.A.

Federal Court of Appeal  Cour d'appel fédérale

Date: 20121123

Docket: A-56-12

Citation: 2012 FCA 310

CORAM: **NOËL J.A.**
MAINVILLE J.A.
WEBB J.A.

BETWEEN:

LORETTA BECK

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT

WEBB J.A.

[1] This is an application by Loretta Beck (the applicant) for judicial review of the decision of the Pension Appeals Board (the PAB) dated January 12, 2012 (CP27186). The PAB held that the evidence before it did not support a finding that, on (or prior to) December 31, 2000 (the end of her minimum qualifying period (MQP)), the applicant was suffering from a severe and prolonged physical disability and was unable to pursue any substantially gainful employment. Therefore the applicant was not disabled for the purposes of the *Canada Pension Plan*, R.S.C. 1985, c. C-8, (the CPP).

[2] At the hearing before us the applicant requested leave to submit additional documents. The Crown opposed this request. In *Public School Boards' Association of Alberta v. Alberta (Attorney General)*, 2000 SCC 2 the Supreme Court of Canada noted that:

> 6 The traditional test for the admission of fresh evidence on appeal was stated by this Court in *Palmer v. The Queen*, [1980] 1 S.C.R. 759, at p. 775:
>
> (1) The evidence should generally not be admitted if, by due diligence, it could have been adduced at trial provided that this general principle will not be applied as strictly in a criminal case as in civil cases: see *McMartin v. The Queen*, [1964] S.C.R. 484.
>
> (2) The evidence must be relevant in the sense that it bears upon a decisive or potentially decisive issue in the trial.
>
> (3) The evidence must be credible in the sense that it is reasonably capable of belief, and
>
> (4) It must be such that if believed it could reasonably, when taken with the other evidence adduced at trial, be expected to have affected the result.

[3] The new evidence relates to attempts by the applicant to correct her medical records and her various medical problems. However, none of the new documents assist the applicant in establishing that she was suffering from a severe and prolonged physical disability and was unable to pursue any substantially gainful employment *as of December 31, 2000*. There is simply nothing in the new evidence (when taken with the evidence before the PAB) that could reasonably be expected to have affected the result and therefore the new evidence is not admissible.

[4] The PAB thoroughly reviewed her medical history (most of which was for the period after December 31, 2000) and concluded that there was "no objective medical evidence that she was disabled any time prior to the end of her MQP to the extent she was incapable of pursuing any

substantially gainful employment to bring her within [subsection] 42(2) of the CPP" (paragraph 19 of the reasons issued by the PAB). The applicant has not demonstrated that the PAB made any reviewable error in making this finding.

[5] As a result the appeal will be dismissed, without costs.

"Wyman W. Webb"
J.A.

"I agree
Marc Noël J.A."

"I agree
Robert M. Mainville J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-56-12
STYLE OF CAUSE:	LORETTA BECK V. ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	Halifax, Nova Scotia
DATE OF HEARING:	November 20, 2012
REASONS FOR JUDGMENT BY:	WEBB J.A.
CONCURRED IN BY:	NOËL J.A. MAINVILLE J.A.
DATED:	November 23, 2012

APPEARANCES:

Loretta Beck	FOR THE APPLICANT (ON HER OWN BEHALF)
Jennifer Hockey	FOR THE RESPONDENT

SOLICITORS OF RECORD:

N/A	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada	FOR THE RESPONDENT